



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,466	04/28/2005	Andrea Venturelli	5625	6473
26/936 7590 10/31/2008 SHOEMAKER AND MATTARE, LTD 10 POST OFFICE ROAD - SUITE 110 SILVER SPRING, MD 20910				
EXAMINER PATEL, PRITESH ASHOK				
ART UNIT		PAPER NUMBER		
4158				
MAIL DATE		DELIVERY MODE		
10/31/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/531,466

Applicant(s)

VENTURELLI, ANDREA

Examiner

PRITESH PATEL

Art Unit

4158

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE-US)
Paper No(s)/Mail Date 04/15/2005
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 4/15/2008 was filed before the mailing date of the First Office Action on the Merits. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 20-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz et al. (US 5573520) in view of Swanson (US 5743876).

Concerning Claim 20-26 and 28-35, Schwartz et al. discloses a flexible tubular device for use in medical applications comprising of a helical slit (52), the tube (50) made of a flexible material preferably a metal (Fig 10, Column 7, Lines 60-65). Schwartz et al. also discloses the use of PTFE as a coating for the tube (50) in order to decrease friction and increase biocompatibility (Column 4, Lines 30-34). Schwartz et al. fails to disclose a discontinuous helical pattern, a plurality of notches, the distance of separation increasing as the slits near the proximal section, and diameter of the tube. Swanson discloses a discontinuous pattern of a plurality of notches where the axial distance between notches increases from a distal to a proximal direction. (Fig 10). Swanson teaches that the slits can cover any portion of a tube from a section to a whole tube and that a strong flexible material can be used for the tube, preferably metal, and that the number of the plurality of notches on the tube can be changed to increase or decrease flexibility of the tube (Column 9, Lines 4-11). It would have been obvious to one of ordinary skill in the art at the time of invention to modify Schwartz et al. with a discontinuous pattern of notches where the distance between notches increases in an axial direction from distal to proximal portions as taught by Swanson to increase flexibility of a tube for maneuvering within the body. It would be obvious to one skilled in the art at the time of the invention that modified Schwartz et al. could have been made by numerous manufacturing techniques to reduce size of the tube without changing functionality or concept. The notches would follow the helical pattern taught by Schwartz et al., but be discontinuous as taught by Swanson. The angle of the partial helical lines could have been at varied angles depending on flexibility requirements of the tube.

Concerning Claim 27, Schwartz does not disclose a circular notch with a diameter wider than the width of the slit. Swanson discloses an embodiment of a tube that has a plurality of open orifices with a diameter wider than that of the plurality of notches (Fig 21 Swanson). It would have been obvious to one of ordinary skill at the time of the invention to modify Schwartz et al. with a circle like aperture as taught by Swanson. The orifices on a tube could have allowed for better deliver across a guide wire or an outlet for an infusion tube, but more specifically allowed for distinct maneuverability characteristics based upon the amount of orifices present and the density per length of tube.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PRITESH PATEL whose telephone number is (571)270-7025. The examiner can normally be reached on Monday-Friday 7:30Am-5:00PM, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on (571)272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. P./
9/16/2008
Examiner, Art Unit 4158

/Gary Jackson/
Supervisory Patent Examiner
Art Unit 4158
10/1/08